IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.12420 of 2003
UDESHWAR SINGH @ UDESHWAR SHARMA & ANR
Versus
STATE OF BIHAR & ANR

For the petitioners: Mr. Shevendra Prasad
For the State: Mr. Md. Mushtaque Alam,
APP
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16 1.7.2008 Heard learned counsel for the petitioners and learned counsel for the State.

None appears on behalf of opposite party no.2 to argue the matter.

This application has been filed for quashing the order dated 21.4.2003 passed by learned Chief Judicial Magistrate, Jehanabad in Complaint case no. 296/94 whereby he had taken cognizance under sections 302 and 201 read with 34 of the Penal Code against the petitioners accused and issued process for their appearance.

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The case of prosecution/opposite party no.2 as it appears from the record that one Devendra Pd.Singh, the younger brother of late Surendra Prasad Singh filed Complaint Case no. 9/94 before the Chief Judicial Magistrate, Jehanabad on 6.1.94 alleging therein that Surendra Prasad Singh (deceased) was his brother and was a retired Government servant. He was getting pension and residing at Jehanabad in his own house. It was alleged that accused Udeshwar Singh and Gayatri Devi killed him by poisoning with a view to grab his property on 1.1.94. It was further alleged that as he

was engaged in performing his last rites and so he could not lodge the case immediately. It appears that learned Chief Judicial Magistrate, Jehanabad sent a copy of the complaint petition to the officer incharge of Jehanabad police station under section 156(3) Cr.P.C. for registration and investigation on the basis of which the police registered Jehanabad P.S. case no. 12/94 dated 11.1.94 and after concluding investigation submitted final report with the lable allegations false. It appears that a protest petition was filed by the wife of the deceased in the said case on 7.5.94 but the same was dismissed as she was not informant of the case. Thereafter Complaint case no. 296/94 was filed by opposite party no.2 Maya Devi @ Rajmani Devi on 31.8.94. Learned Chief Judicial Magistrate accepted final report so submitted by the police on 15.9.94 and thereafter the complainant was examined on solemn affirmation on 16.9.94.

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The case of complainant/opposite party no.2 Maya Devi @ Rajmani Devi, in short, as put in the complaint was that her husband Surendra Prasad Singh after retirement from service started living at Jehanabad in a rented house with her. It was alleged that accused Gayatri Devi along with husband was also residing in the same house. Gayatri Devi took husband of Maya Devi into confidence. It was further alleged that husband of complainant started neglecting her and started living with accused Gayatri Devi in their newly purchased house. Since the husband of the complainant was not looking her properly she filed a case for

maintenance which was, however, dropped as her husband died during the pendency of the proceeding. She further alleged that accused persons killed her husband by poisoning on 31.12.93 and at false pretext took him to Patna and prepared fabricated medical report and certificates and cremated him at Bans ghat on (1.1.94) . It was further alleged that accused persons committed the offence to grab the estate of the deceased.

It appears that during inquiry under section 202 Cr.P.C. four witnesses were examined and the learned Magistrate by the impugned order dated 21.4.2008 took cognizance against accused persons and issued summons against them.

Learned counsel submitted that late Surendra Prasad Singh was unmarried. He was issueless. The complainant is not the wife of the deceased. She is also not the informant of the police case. He further submitted that opposite party no.2/complainant filed complaint case with a view to grab the properties of the deceased. He submitted that in the succession case the complainant has admitted that late Surendra Singh died of ailment. He then pointed out that in succession case there is observation of the court that the complainant is not the wife of the deceased. Learned counsel further submitted that the deceased died of natural death during treatment at P.M.C.H. In this connection he referred to annexure-6 to the application. He submitted that no post mortem was done on the dead body of the deceased. He then submitted that though the alleged occurrence took place on 1.1.94 and the cognizance in the present

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case has been taken after expiry of seven years. He further submitted that except suspicion there is nothing more against the petitioners. Learned counsel further submitted that the deceased died due to ailment and on the basis of suspicion the continuance of the prosecution case against the petitioners would be an abuse of the process of the court. In support of his argument, learned counsel placed reliance on a decision reported in 2007(2) PLJR (SC) 226 given in the case of Harishchandra Prasad Mani and ors. Vrs State of Jharkhand and anr.

Learned counsel for the State, on the other hand, opposed the application and submitted that at this stage adequacy of evidence will not be seen by the court.

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Thus the position is that as per certificate (annexure-6) Surendra Singh died on 1.1.94 during course of treatment at PMCH. Devendra Singh being younger brother of the deceased filed Complaint Case no.9/94 before the Chief Judicial Magistrate, Jehanabad on 6.1.94 regarding alleged murder of his brother Surendra Prasad Singh. The police registered Jehanabad P.S. case no. 12/94 as per direction of Chief Judicial Magistrate, Jehanabad and after investigation submitted final report as false. Devendra Prasad Singh did not file any protest against the police investigation before the Chief Judicial Magistrate, Jehanabad rather the complainant had filed a protest cum complaint which was dismissed. Thereafter opposite party no.2 filed present Complaint case no. 296/94 before the said court. Admittedly no post mortem was done

on the dead body of the deceased. There is finding of competent civil court that opposite party no.2 /complainant is not the wife of the deceased.

In the decision relied upon by the petitioners it has been observed by the Apex Court that at the stage of taking cognizance adequacy of evidence will not be seen by the court but there has to be at least some material implicating the accused and cognizance cannot be taken merely on the basis of suspicion.

In the present case also there is no reliable evidence to show that the deceased was killed by poisoning. On the other hand, there is certificate of PMCH that the deceased died due to diabetic nephropathy. It appears that in the present case cognizance has been taken merely on the basis of suspicion. Therefore, the present prosecution would only cause harassment to the petitioners.

In the facts and circumstances, this application is allowed and the order of cognizance dated 21.4.03 against the petitioners is hereby quashed.

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(M.Saran,J)